

The Federalist Papers: Modern English Edition Two

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Number 51: Separation of Powers: Structural Checks and Balances

[The paragraph numbering is different in some editions of The Federalist Papers.]

The Constitution divides government power among three branches. The government must be designed so that the three branches--executive, legislative, and judiciary--can keep each other in their proper places. We will study the Constitution and decide whether it fulfills this goal.

Perfect Separation:

People Appoint All Officials

2 To preserve liberty, government's powers must be separated. The first step towards the separation of powers is finding a way to appoint or elect people to each branch, without the appointee being overly dependent on people in another branch.

If we wanted total separation of powers, the people would elect every member of the executive, legislative, and judiciary branches. This would be difficult and expensive. Instead, each branch must have as little input as possible in appointing members of the other branches.

Judiciary: Specific Qualifications

Electing judges might not be very successful.

First, judges must have specific qualifications. There should be a way to choose judges that secures these qualifications.

Second, since judges are appointed for life, they will not feel obligated or dependent on the people who appoint them.

Compensation Creates Dependence

3 If executive and judicial branches depend on the legislature for their pay, they would not be independent. Therefore, members of each branch should depend--as little as possible--on other branches for their pay.

Authority, Motives to Resist Usurpations

4 There needs to be a way to block a branch of government from getting more power than the constitution gives it. Each branch needs both constitutional tools and personal motives to block encroachments. Ambition must counteract ambition. The personal interests of the man must be connected with the constitutional rights of his office.

Government Reflects Human Nature;

Angels Don't Need Government

Government is, after all, the greatest of all reflections on human nature. If men were angels, no government would be necessary. If angels governed men, no controls on government would be necessary. But men govern men. So, security measures are necessary to control the abuses of government.

In framing a government, the great difficulty lies in this:

- first, the government must control the governed, and
- second, it must be forced to control itself.

The primary control on the government is its dependency on the people. But experience teaches us that more precautions are necessary.

Checks, Balances in All Organizations

5 All organizations use rival interests to maintain a balance of power.

To keep a balance of power, power is divided among lower-level offices. The goal is to structure the organization so that the offices become a check on each other.

When the goal is met, the personal interest of the officeholder guards the public rights. This balanced structure is just as important when distributing the supreme powers of government.

Divide Legislative; Fortify Executive

6 But it is impossible to give each branch of government an equal power of self-defense. In a republic, the legislature always has the most power. To counteract this, (1) the legislature is divided into two houses, (2) the houses are elected in different ways, and (3) they have different constitutional powers.

The legislative houses are as little connected as their duties and dependence on society will allow. And more blocks to dangerous encroachments may be necessary.

The strength of the legislative power requires that it be divided.
The executive is weak and may need strengthening.

The executive should have the power to veto legislation. But veto power, alone, may not be enough. It might be dangerously abused or might not be used when it is needed. Is there a way to structure government so that the weaker side of the stronger legislative branch could support the constitutional rights of the weaker executive branch, without hurting the rights of its own branch?

Constitution and Separation of Powers

7 The federal Constitution does not do a perfect job of separating government's powers. However, the State constitutions do a worse job of separating powers.

U. S. Federal System Unique

8 Two things make America's federal system unique.

State Governments:

Additional Check on Federal Government

9 First. In a single republic, the people surrender some of their power to a single government. To block usurpations, the government is divided into separate branches.

America is a compound republic. The people surrender some power, which is divided between the State and federal governments. Then the powers given to each government is subdivided among the separate

branches. This means that the rights of the people are doubly protected. The State and federal governments will control each other; at the same time, each will have internal controls.

Oppression from Society

10 Second. In a republic, society must be protected against the oppression of its rulers. And one part of the society must be guarded against the injustice of another part.

Different groups of citizens have different interests. If a majority is united by a common interest, the rights of the minority will be in danger. There are only two ways to remove this danger.

One, create a will in the community independent of the majority, that is, independent of the society itself. This method prevails in dictatorships. At best, it is a weak security. At worst, a dictator can turn against both the majority and minority interests.

Or two, make sure there are so many different types of citizens in the society that unjust majority alliances will be impossible or impractical. The federal republic of the United States is an example of this. All authority will come from and depend on the citizens. The citizens will have many different interests. And there will be so many different groups of citizens that individual rights and minority rights will be in little danger.

In a free government, the security for civil rights is the same as that for religious rights. A society with a wide variety of interests secures civil rights; a wide variety of religions secures religious rights. This security depends on the size and population of the country.

To all people who like republics, this recommends a proper federal system. As territories become States and join the Union, it will be easier for an oppressive majority group to grow. The security for the rights of every citizen will diminish. Therefore, some part of government must be more stable and independent.

Justice is the final goal of civil society and government. It will be pursued until it is obtained or until liberty is lost in the pursuit.

When a society is structured so that a strong faction can easily unite and oppress a weaker group, anarchy reigns. This happens in nature. A weak individual is not protected against the violence of the stronger. Yet even in nature, some stronger individuals form a "government" that may protect the weak as well as themselves just because they are unsure of what may happen.

In human society, a similar motive will encourage powerful factions or groups to want a government that will protect all groups, the weaker as well as the more powerful.

Let's suppose the State of Rhode Island was separated from the Confederacy and left to itself. Factious majorities would repeatedly oppress the people.

Even the people within some of the majority faction would worry about losing their rights. They would call for a power that is independent of the people to help. The very factions, whose misrule had made it necessary, would look for outside help.

The United States is a large republic. It will include a great variety of interests, groups, and sects. A factious majority could seldom happen on any principles other than justice and the general good. There is less danger to a minority from the will of a majority party. There will also be fewer reasons to pass laws that secure minority goals but are not supported by a majority of society itself.

The larger the society, provided it lies within a practical size, the more capable it will be of self-government. And happily for people who want a republic, the practical size can be large by using judicious modifications and a mixture of the federal principle.

Publius

Questions:

1. Publius states that to truly separate the powers of government, the election/appointment of each branch member should be performed by whom? Is this feasible?
2. What does the author state about appointing the judiciary?
3. Explain the phrase, "ambition must counteract ambition."
4. What observation does Publius make about human nature and abuse in government?
5. Which branch of government is said to need division? How is this division proposed?
6. Which branch does the author claim to need fortification?
7. Explain the divisions of powers that make up the concept of a compound republic.
8. How does the size of a constituency better protect the rights of each constituent?